

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Complaint of Ramon Lopez

Docket No. C2011-5

ORDER DISMISSING COMPLAINT

(Issued July 3, 2011)

I. INTRODUCTION

Ramon Lopez (Complainant) alleges, pursuant to 39 U.S.C. § 3662, that the Postal Service has unlawfully discontinued mail to his home located in Homestead, Florida.¹ He claims that this has caused him to incur damages of approximately \$2,500. Complaint at 2. For the reasons given below, the Commission dismisses Mr. Lopez's Complaint.

II. BACKGROUND

The Complaint, filed on July 12, 2011, alleges that the Postal Service has refused to deliver mail to the Complainant's home, located at 29800 SW 183 Ct.,

¹ Complaint of Ramon Lopez, July 12, 2011 (Complaint).

Homestead, Florida 33030 (Complainant's home). *Id.* at 1. Complainant requests the Commission to "[o]rder the...Postal Service to...restore mail service to complainant's homestead", and "to hold respondent USPS liable for compensatory damages and the costs of this complaint in the amount of no less than § [sic] 2,500.00." *Id.* at 2.

Upon receipt of the Complaint, the Commission referred the matter to the Postal Service for investigation pursuant to the service inquiry procedures set forth in 39 CFR 3031.11. The Postal Service responded with a letter to Ramon Lopez from Debra C. Fuller, USPS Consumer & Industry Affairs, July 25, 2011 (Fuller Letter) stating that delivery to Complainant's home had been suspended because his home was found to be vacant.² *Id.* at 1. The Fuller Letter then explained that a change of address form was completed by the letter carrier servicing the route and held for 10 days at the local post office, after which, in accordance with Postal Service regulations, mail was returned to the respective senders. *Id.*

Because the Fuller Letter appeared to resolve the service inquiry, the Commission dismissed the Complaint as provided in 39 CFR 3031.11(c).³ Approximately 1 month later, on September 8, 2011, the Commission received additional correspondence from Complainant that replied to the Fuller Letter.⁴ The Lopez Reply alleged that the Fuller Letter was not responsive to the Complaint, and that the Postal Service had refused to restore mail delivery services to the Complainant's residence despite the Complainant's repeated requests and the presence of a caretaker to receive mail at the Complainant's residence. *Id.* at 1-2. The Commission acknowledged the Lopez Reply with a letter dated September 9, 2011, notifying Complainant that the Complaint had been dismissed and enclosing a copy of Order No. 796.

² The Fuller Letter was incorporated into the record of this case by Order Supplementing Record, Attachment 1, March 30, 2012 (Order No. 1304).

³ Order Dismissing Complaint, August 10, 2011 (Order No. 796).

⁴ Reply to the United States Postal Service's Response, September 8, 2011 (Lopez Reply). This document was posted on the Commission's website on September 8, 2011 and incorporated into the record of this case by Order No. 1304, Attachment 2.

On September 23, 2011, Complainant filed a petition for review of Order No. 796 in the United States Court of Appeals for the District of Columbia Circuit.⁵ On January 12, 2012, the Commission requested a voluntary remand of Complainant's case.⁶ It explained that additional efforts by the Commission to address the matter may aid in the resolution of the dispute between the Complainant and the Postal Service, stating that "further filings by the parties may help to identify any factual inaccuracies and dispel any remaining misunderstandings concerning the Postal Service's policies and regulations governing the delivery, suspension, and reinstatement of mail to unoccupied residences." *Id.* at 3-4. The Court remanded the proceedings to the Commission on February 6, 2012.⁷

On February 21, 2012, the Commission issued an order establishing procedures,⁸ which stated that the Commission would consider the Lopez Reply on its merits, afforded Complainant an opportunity to supplement the Lopez Reply with any additional comments, and directed the Postal Service to respond to the Lopez Reply and any supplemental comments.

On April 9, 2012, Complainant filed supplemental comments.⁹ The Lopez Comments include the Affidavit of Tomas Caballero (Caballero Affidavit) in which Mr. Caballero identifies himself as the caretaker of Complainant's residence, states that he stays in the house during weekdays and some weekends. Mr. Caballero states further that due to the interruption of mail he has been obligated to travel to the utility company to pay late fees and incur additional expenses, (*id.* at 4) and that he has

⁵ Petition for Review of Case, *Lopez v. Postal Regulatory Comm'n*, No. 11-1346 (D.C. Cir. Sept. 23, 2011).

⁶ Respondent's Motion for Voluntary Remand of the Case, *Lopez v. Postal Regulatory Comm'n*, No. 11-1346 (D.C. Cir. Jan. 12, 2011).

⁷ Order on Motion for Voluntary Remand of the Case, *Lopez v. Postal Regulatory Comm'n*, No. 11-1346 (D.C. Cir. Feb. 6, 2011).

⁸ Order No. 1242, Order Establishing Procedures, February 21, 2012.

⁹ Supplemental Comments, April 9, 2012 (Lopez Comments).

repeatedly visited the Postal Service's office in Homestead, Florida to request the restoration of the delivery of mail to no avail. *Id.*

The Lopez Comments also include a Declaration in Support of Complaint and Reply (Complainant's Declaration) in which Complainant states that the mail interruption to his house was "caused by either negligence, bad faith, and/or in violation of the Postal Service Procedures and policies." *Id.* at 6. He states that the mail interruption has created a series of substantial and unnecessary expenses, including late payments on his utility bills and the loss of the property's 2011 Homestead Exemption. *Id.* at 7. He claims that the continued interruption of mail service and the refusal to restore this service "appear to be motivated by [his] condition of being incarcerated, and/or [his] ethnic background." *Id.* at 7.

The Postal Service responded to the Lopez Comments on April 13, 2012 with a motion to dismiss.¹⁰ In its Motion to Dismiss, the Postal Service argues that the Complainant has failed to allege specific violations of title 39 that give rise to Commission jurisdiction under 39 U.S.C. § 3662. *Id.* at 1. Alternatively, the Postal Service states that it has recently resumed delivery of mail to Complainant's home thereby rendering the Complaint moot. *Id.* at 2. Finally, the Postal Service asserts that 28 U.S.C. § 2860(b) exempts it from paying damages for claims arising out of the failure to deliver mail. *Id.* Complainant has not filed an answer to the Postal Service's Motion to Dismiss.¹¹

III. COMMISSION ANALYSIS

The Commission's jurisdiction to hear complaints is established by 39 U.S.C. § 3662. In seeking dismissal of the Complaint, the Postal Service argues that Mr. Lopez failed to allege violations of title 39 that give rise to jurisdiction under section

¹⁰ Motion of the United States Postal Service to Dismiss Complaint of Ramon Lopez with Prejudice, April 13, 2012 (Motion to Dismiss).

¹¹ On April 17, 2012, the Commission served the Motion to Dismiss on Complainant by Priority Mail, with Delivery Confirmation. It was delivered to Complainant's current address on April 23, 2012.

3662. Motion to Dismiss at 1. While the Commission has determined that the Complaint should be dismissed, it finds it unnecessary to address the jurisdictional issue.

The basis for Mr. Lopez's Complaint is the Postal Service's failure to deliver mail to Complainant's home. Complainant requests first that the Commission order the Postal Service to restore mail service. Complaint at 2, ¶ 6A; see *also* Complainant's Declaration, ¶ 11. In its Motion to Dismiss, the Postal Service represents that delivery has been resumed to Complainant's home on the basis of representations made in the Caballero Affidavit and Complainant's Declaration that Mr. Caballero has been retained to retrieve Complainant's mail and that the property is no longer vacant. Motion to Dismiss at 2. In light of these developments, the Commission finds that the issue raised and relief sought by Complainant regarding restoration of mail service have been rendered moot.

In his second request for relief, Complainant alleges that he is owed \$2,500 in damages arising out of the Postal Service's failure to deliver mail to his residence, causing him to incur late payments on his utility bills and to lose the Homestead Exemption on his residence. Complaint at 2, ¶ 6B; and Lopez Comments at 7. The Postal Service responds by stating that 28 U.S.C. § 2680(b) exempts it from paying damages for claims arising out of failure to deliver mail.¹² Motion to Dismiss at 2. The Supreme Court has interpreted this exemption to apply to "failings in the postal obligation to deliver mail in a timely manner to the right address...." *Dolan v. U.S. Postal Service*, 546 U.S. 481, 487 (2006) (*citing Raila v. United States*, 355 F.3d 118, 121 (2d Cir. 2004) in which the Court held that the exemption covers "damages and delay of the postal material itself and consequential damages therefrom.>").

In the instant case, section 2680(b) bars Complainant's request for consequential damages from the Postal Service for having failed to deliver his mail. By requesting

¹² Section 2680(b) preserves the bar of sovereign immunity to "any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter" by establishing an exemption to the waiver of sovereign immunity otherwise available to plaintiffs under the Federal Tort Claims Act.

relief that is statutorily barred, Complainant has failed to present a claim on which relief can be granted.

For the foregoing reasons, the claims by Complainant Ramon Lopez are either moot or insufficient as a matter of law and are therefore dismissed.

IV. ORDERING PARAGRAPH

It is ordered:

The Complaint of Ramon Lopez, filed July 12, 2011, is hereby dismissed.

By the Commission.

Shoshana M. Grove
Secretary